

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

<b>RAYMOND ARNOLD, ALDON BADE,</b>	)	
<b>BRENDA BADE, RETA AND GENE</b>	)	
<b>BROWN, JOHN AND PEARL</b>	)	
<b>CALDWELL, GENTRY T. CALHOUN,</b>	)	
<b>P.T. CALHOUN, SHANNON CALHOUN,</b>	)	
<b>ELLIE CARTER, LYNN AND GINGER</b>	)	
<b>COOK, WERGER DOHMANN, CRAIG</b>	)	
<b>AND LUANN DUDERSTADT, GOLIAD</b>	)	
<b>COUNTY FARM BUREAU, JESSICA</b>	)	
<b>HAMMONS, RAULIE AND GEORGIA</b>	)	
<b>IRWIN, ASHLEY JACKSON, MEGAN</b>	)	
<b>LONG, PAM LONG, TED LONG,</b>	)	<b>Case No. _____</b>
<b>LINDA L. NELSON, WEXFORD</b>	)	
<b>RANCH, CALHOUN RANCHES,</b>	)	
<b>BARBARA SMITH, JARED SMITH,</b>	)	
<b>ROBERT SMITH, AND DON SUGAREK</b>	)	
<b>Petitioners,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>UNITED STATES ENVIRONMENTAL</b>	)	
<b>PROTECTION AGENCY,</b>	)	
<b>Respondent.</b>	)	

**PETITION FOR REVIEW**

This Petition for Review is filed pursuant to the Safe Drinking Water Act (“SDWA”), 42 U.S.C. §300j-7 (“judicial review”), and Rule 15(a) of the Federal Rules of Appellate Procedure, and Rule 15.1 of the Rules of the U.S. Court of Appeals for the Fifth Circuit. The Petitioners are Raymond Arnold, Aldon Bade, Brenda Bade, Reta and Gene Brown, John and Pearl Caldwell, Gentry T. Calhoun, P. T. Calhoun, Shannon Calhoun, Ellie Carter, Lynn and Ginger Cook, Werger

Dohmann, Craig and Luann Duderstadt, Goliad County Farm Bureau, Jessica Hammons, Raulie and Georgia Irwin, Ashley Jackson, Megan Long, Pam Long, Ted Long, Linda L. Nelson, Wexford Ranch, Calhoun Ranches, Barbara Smith, Jared Smith, Robert Smith, and Don Sugarek (hereinafter “Petitioners”); and they respectfully petition the Court for the review of a final action of Respondent, U.S. Environmental Protection Agency (“EPA”). A copy of the EPA letter—the final agency action—is attached.

The attached letter has a subject entitled “UIC<sup>1</sup> Program Revision establishing an Aquifer Exemption for uranium mining in the A, B, C, and D sands of the Goliad Aquifer near Ander, Texas in Goliad County.” The letter is dated December 4, 2012, and it establishes that EPA granted an aquifer exemption to the Texas Commission on Environmental Quality (“TCEQ”) pursuant to the SDWA.

The TCEQ had requested this exemption for the protected Goliad Aquifer in order that Uranium Energy Corporation (“UEC”) can mine uranium and pollute the aquifer. Petitioners live in Goliad County and have strenuously opposed TCEQ’s actions, and now EPA’s approval of this aquifer exemption for UEC’s purposes, because the citizens in Goliad County rely on the aquifer for their drinking water. Approximately 5,000 domestic and livestock water wells are located throughout Goliad County.

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<sup>1</sup> “UIC” stands for Underground Injection Control.

Groundwater is the sole source of domestic water supply for Goliad County, and, therefore, the backbone of the citizens' livelihood. Petitioners do not believe the groundwater quality of the Goliad Aquifer will be restored by UEC, because no mining operator in Texas has ever restored water quality to its original state.

## **I. PROCEDURAL HISTORY**

UEC submitted its application to the TCEQ for Underground Injection Control Permit No. UR03075 on August 7, 2007. The Executive Director of the TCEQ completed the technical review of the application and prepared a draft permit on June 17, 2008. The TCEQ then received UEC's application for new Production Area Authorization No. UR03075PAA1 on September 4, 2008. The Executive Director completed the technical review of this application and prepared a draft Production Area Authorization ("PAA") on June 2, 2009.

The issue presented by this Petition for Review—whether an aquifer exemption is warranted under the SDWA—was first tried before an administrative law judge in May 2010. In the administrative court proceedings, the administrative law judge recommended that UEC's applications for a permit either be denied or remanded for additional actions to be taken and additional evidence received. The Proposal for Decision and Order were issued by Administrative Judge Wilfong on September 28, 2010.

However, at the TCEQ's meeting on December 14, 2010, the Commission disregarded the ALJ's recommendation and decided to issue Class III Injection Well Permit No. UR03075 to UEC. On March 9, 2011, the TCEQ issued an Order approving UEC's applications.

On May 27, 2011, the TCEQ applied to EPA for an aquifer exemption. On May 16, 2012, EPA requested additional information from TCEQ. Subsequently, TCEQ amended its request in a letter dated November 16, 2012.

The EPA's final agency action occurred on December 4, 2012 in the form of a letter from EPA to the TCEQ, granting the requested exemption. From this date Petitioners have calculated the 45-day period to file a petition for review pursuant to 42 U.S.C. §300j-7.

## **II. AGENCY ERROR AND REVIEW SOUGHT**

EPA's approval of the aquifer exemption is arbitrary and capricious and not in accordance with the law for several reasons, including, but not limited to the following:

1. The grant of the aquifer exemption contravenes the federal Safe Drinking Water Act, including regulations promulgated pursuant to the Act; and
2. Respondent EPA approved the request by TCEQ without either party making certain changes to the exemption area available to the public; and

3. Respondent EPA denied Petitioners the opportunity for a hearing in violation of 40 C.F.R. § 145.32(b).

### **III. RELIEF REQUESTED**

Petitioners respectfully request that the Court:

- 1) determine that the EPA's Final Action to approve the Texas aquifer exemption is not in accordance with the law, is arbitrary and capricious, and thus be vacated and set aside;
- 2) in the alternative, remand the action to EPA to conduct a hearing and allow public participation in accordance with 40 C.F.R. § 145.32(b); and
- 3) grant such additional relief as may be just and appropriate.

Respectfully submitted,

BLACKBURN CARTER, P.C.

by   
JAMES B. BLACKBURN, JR.

TBN 02388500

MARY B. CONNER

TBN 24050440

4709 Austin Street

Houston, Texas 77004

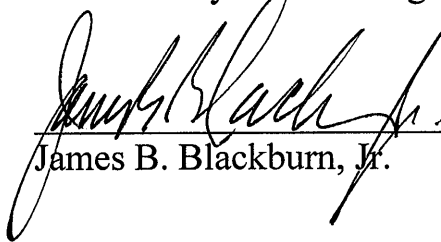
(713) 524-1012

(713) 524-5165 (fax)

*Attorneys for Petitioners*

## **CERTIFICATE OF SERVICE**

On this 17th day of January, 2013, a true and correct copy of the PETITION FOR REVIEW was served on all persons listed below by the undersigned via U.S. Certified Mail Return Receipt Requested.

  
James B. Blackburn, Jr.

### **Service List**

Ms. Lisa P. Jackson  
Environmental Protection Agency  
Ariel Rios Building, Room 3000  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0000

Mr. Ron Curry  
Regional Administrator  
U.S. Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202

Ms. Brenda Mallory  
General Counsel  
Correspondence Control Unit  
Office of General Counsel, MC-2311  
U.S. Environmental Protection Agency  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

**ATTACHMENT**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
1445 ROSS AVENUE, SUITE 1200  
DALLAS, TX 75202-2733

DEC 4 2012

Zak Covar  
Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

RE: UIC Program Revision establishing an Aquifer Exemption for uranium mining in the A, B, C, and D sands of the Goliad Aquifer near Ander, Texas in Goliad County

Dear Mr. Covar:

The U.S. Environmental Protection Agency (EPA) has completed its review of the Texas Commission on Environmental Quality's (TCEQ's) formal application to exempt portions of the A, B, C and D sands of the Goliad Aquifer near Ander, Texas and considers it a non substantial revision to the TCEQ underground injection control program. TCEQ's original application was transmitted in a May 24, 2011 letter from Susan Jablonski to Miguel Flores. Accordingly, on May 16, 2012, EPA requested additional information to support a finding that the exempted area of the aquifer does not currently serve as a source of drinking water for nearby drinking water wells. TCEQ's request was amended to reduce the aerial extent of the exemption in a letter dated November 16, 2012 from Charles W. Maguire (received by EPA on November 30, 2012). As such, by authority delegated to the Regional Administrator and redelegated to the Water Quality Protection Division Director, the EPA approves the amended exemption under the criteria provided in Title 40 of the Code of Federal Regulations §146.4.

EPA concludes that the portion of the aquifer proposed for exemption meets the criteria for exemption as follows:

- §146.4 (a): It does not currently serve as a source of drinking water; and
- §146.4 (b) (1): It cannot now and will not in the future serve as a source of drinking water because it has been demonstrated by permit application to contain minerals that, considering their quantity and location, are expected to be commercially producible.

The areal extent of the exempted portions of the A, B, C and D sands are as described by the enclosed map submitted by TCEQ on November 16, 2012 amending the original application. The vertical boundaries of the exempted portions are the top of the A sand and the bottom of the D sand as described in TCEQ's application. This exemption only pertains to the injection of lixiviant through Class III



injection wells for the purposes of mining uranium, and fluids associated with aquifer restoration following mining operations. If you have any questions, please contact me at (214) 665-7101, or your staff may contact Mr. Philip Dellinger, Chief of the Ground Water/UIC Section at (214) 665-8324.

Sincerely,

A handwritten signature in black ink, appearing to read "WK Honker", written in a cursive style.

William K. Honker, P. E.

Director

Water Quality Protection Division (6WQ)

Enclosure

cc: Art Dohmann, GCGCD  
Alvin DeForest, St. Peters Lutheran Church  
Harry Anthony, UEC  
Charles McGuire, TCEQ

Bryan W. Shaw, Ph.D., *Chairman*  
Toby Baker, *Commissioner*  
Carlos Rubinstein, *Commissioner*  
Zak Covar, *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

November 16, 2012

91 7108 2133 3935 1936 0479

CERTIFIED MAIL

Mr. William K. Honker, P.E.  
Acting Director  
Water Quality Protection Division  
United States Environmental Protection Agency (EPA)  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

Re: Amended Request for Approval of Non-Substantial Underground Injection Control (UIC) Program Revision to Establish an Aquifer Exemption in the Goliad Formation, Goliad County

Dear Mr. Honker:

Please accept this amendment to TCEQ's pending request for approval of a non-substantial UIC Program revision to identify an exempted aquifer in the Goliad Formation in Goliad County. The TCEQ issued an order on April 29, 2011, designating a portion of the Goliad Formation as an exempt aquifer associated with UEC's in-situ uranium mining project. In a letter dated May 24, 2011, the TCEQ submitted a request to EPA for approval of a non-substantial revision of the TCEQ's authorized UIC program to the exempted aquifer.

Notwithstanding the TCEQ's opinion that the submitted program revision request meets all applicable regulatory requirements, in a letter dated October 3, 2012 (received October 4, 2012), UEC has requested that the TCEQ's program revision to EPA be revised to reflect the following changes to this aquifer exemption:

The exempt area for Sand A be reduced from 423.8 acres to 96.17 acres; and

The exempt area for Sand B, Sand C, and Sand D be reduced from 423.8 acres to 307.03 acres.

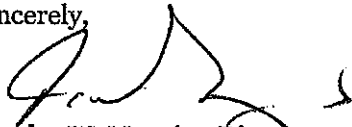
In the exempt area for Sand A, the exemption will extend for a depth of 45 feet to 110 feet. In the exempt area for Sands B, C, and D, the exemption will extend from a depth of 110 feet to 404 feet. A copy of UEC's correspondence and a map of the revised area are enclosed. UEC explains that approximately 117 acres have been removed from the original exempted area for Sands B, C, and D, and 327.63 acres have been removed from the original area for Sand A and that private water wells within the buffer zone surrounding the revised area are not capturing groundwater from the designated exempted aquifer. The revised and reduced portion of the aquifer is completely within the exempted aquifer approved by the TCEQ on April 29, 2012; no additional portions of the aquifer are proposed to be exempted. Although the TCEQ does not consider this

Mr. William Honker  
Page 2  
November 16, 2012

demonstration necessary for EPA to approve TCEQ's program revisions request, the TCEQ agrees with the information provided by UEC and believes that the reduction in the size of the exempted aquifer will alleviate all EPA's concerns on the designation of this exempted aquifer. Accordingly, the TCEQ amends the pending program revision for this aquifer exemption to reflect this reduction in area as depicted on the enclosed map. With the exception of the reduced area of the exempted aquifer, all other information previously provided to EPA by TCEQ should continue to be considered as part of our program revision.

In accordance with 40 CFR §§144.7, 145.32, and 146.4, the TCEQ asks for your approval of this amended non-substantial program revision. If you have any questions or comments regarding this matter please contact me at [charles.maguire@tceq.texas.gov](mailto:charles.maguire@tceq.texas.gov). If you will be responding by letter, please include mail code MC 233 in the mailing address.

Sincerely,

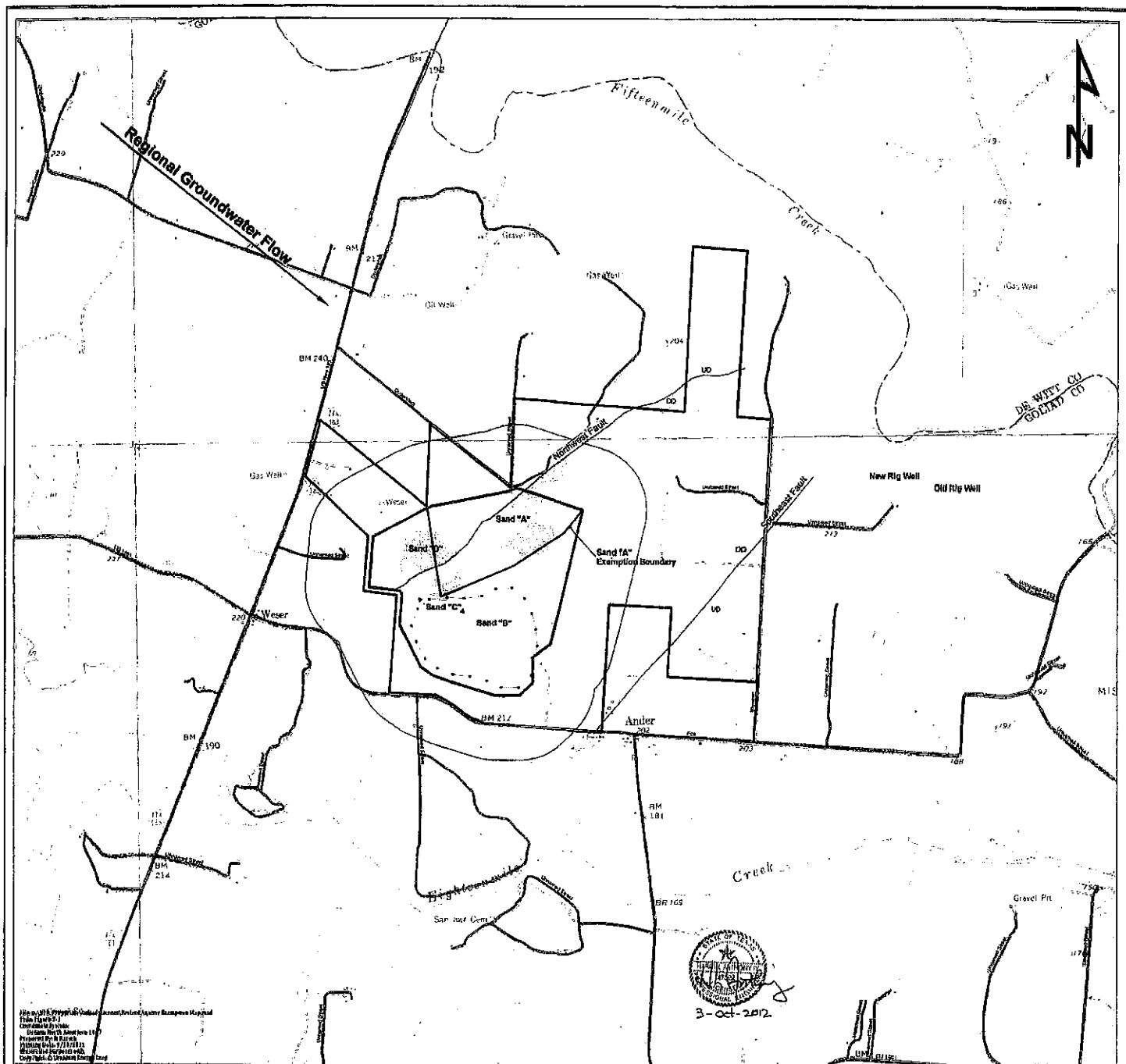


Charles W. Maguire, Director  
Radioactive Materials Division  
Office of Waste  
Texas Commission on Environmental Quality

CWM/DHM/nlc

Enclosures

cc: Mr. Jose Torres, EPA Region 6, 6WQ-S



**PETER GASS**  
A-129

**SQUIRE BURNS**  
A-69

**H.M. FRAZIER**  
A-123

SLAFKA/SCHRADE  
TRACTS 1, 2 & PART OF 3  
VOL. 33, PG. 546  
D.R.G.C.T.

**SQUIRE BURNS**  
A-70

FIRST & THIRD TRACT  
100.00 ACRES  
VOL. 107, PG. 586  
D.R.G.C.T.

LINE	DISTANCE	BEARING
L1	700.00'	N 82°58'43" W
L2	1147.11'	N 04°38'12" E
L3	1384.37'	N 62°48'19" E
L4	1846.06'	N 77°44'30" E
L5	1543.22'	S 72°26'51" E
L6	2884.76'	S 13°46'33" W
L7	468.76'	S 53°46'53" W
L8	548.48'	S 00°02'41" W
L9	377.60'	S 47°28'27" W
L10	496.28'	S 89°16'39" W
L11	937.03'	N 72°41'37" W
L12	440.05'	N 69°18'29" W
L13	310.90'	N 55°47'34" W
L14	1160.46'	N 27°26'26" W
L15	462.86'	N 04°09'40" E

I HEREBY CERTIFY THAT THIS PLAT IS  
TRUE AND CORRECT TO THE BEST OF  
MY KNOWLEDGE, AND BELIEF.

*Trey L. McDermott*

TREY L. McDERMOTT  
R.P.L.S. # 5652



500 0 500 1000 1500 2000 2500 3000

SCALE: 1" = 1000 FEET

**BLACK GOLD SURVEYING & ENGINEERING, INC.**

Land & Oilfield Surveying  
2711 West Front St. P.O. Box 3416  
Alice, Texas 78333  
blackgoldsurveying@bgoil.com  
(361) 668-9200 Fax (361) 668-9204

SURVEYORS NOTE:  
THE INFORMATION SHOWN ABOVE WAS SUPPLIED BY THE CLIENT AND  
THE SURVEYOR MAKES NO GUARANTEE AS TO ITS ACCURACY.

COORDINATES SHOWN ARE BASED ON THE TEXAS STATE PLANE  
COORDINATE SYSTEM, NAD 83, SOUTH CENTRAL ZONE  
WITH CONTROL ESTABLISHED BASED ON THE FOLLOWING  
COORDINATE VALUES FOR NGS STATION "SCHROEDER"  
Y=13,484,798.25 X=2,539,542.22

### A PLAT OF:

AQUIFER EXEMPTION AREA FOR:

**URANIUM ENERGY CORP.**

BEING A CALLED 316.13 ACRE AQUIFER EXEMPTION, BEING  
OUT OF A CALLED 1,140.42 ACRE PERMIT AREA AND ALSO  
BEING OUT OF THE PETER GASS SURVEY, A-129, THE  
SQUIRE BURNS SURVEY, A-69, THE H.M. FRAZIER SURVEY,  
A-123 AND THE SQUIRE BURNS SURVEY, A-70 AND BEING  
LOCATED APPROXIMATELY 13.8 MILES, N 06°54' E OF GOLIAD,  
TEXAS.

Completion Date: 10-26-12 File Name: 121021

Scale: 1"=1000' Surveyed by: NA

Drawn by: TM Checked by: TM

PLOT DATE: 10-26-12 1:02 PM

JOB #: 121021